

1 BEFORE THE GROWTH MANAGEMENT HEARINGS BOARD
2 CENTRAL PUGET SOUND REGION
3 STATE OF WASHINGTON
4

5 PUGET WESTERN, INC.,

6
7 Petitioner,

8 v.

9 CITY OF NORTH BEND,
10

11 Respondent.
12

Case No. 16-3-0001

FINAL DECISION AND ORDER

13
14 **SYNOPSIS**

15 *Petitioner challenged the City of North Bend's adoption of Ordinance No. 1583,*
16 *arguing that it prohibits the siting of truck parking, which is an "essential public facility," in*
17 *violation of the GMA. The Board concluded that the City is not prohibiting the siting of an*
18 *essential public facility and determined the City's action was not clearly erroneous in light of*
19 *the requirements of the GMA and SEPA.*
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22 **I. INTRODUCTION AND BACKGROUND**

23 On April 27, 2016, the City of North Bend (City) adopted Ordinance No. 1583,
24 prohibiting the expansion of an existing commercial truck center/service area beyond its
25 existing site in a city business district which is adjacent to exit 34 on Interstate 90. It also
26 prohibited the development of any additional truck parking and servicing facilities in this
27 district. Puget Western argues that North Bend's Ordinance violates the Growth
28 Management Act (GMA) because commercial truck parking facilities adjacent to exit 34 on I-
29 90 are essential public facilities and cannot be restricted per RCW 36.70A.200. In addition,
30 Puget Western alleges that in adopting its ordinance, the City failed to comply with
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1 provisions of the Washington State Environmental Policy Act (SEPA) RCW 43.21C.020,
2 RCW 43.21C.031. The Board disagrees.

3 4 **II. JURISDICTION AND STANDARD OF REVIEW**

5 The Board finds the Petition for Review was timely filed, pursuant to RCW
6 36.70A.290(2), the Petitioner has standing pursuant to RCW 36.70A.280(2)(a) and (b) and
7 RCW 36.70A.210(6) and the Board has jurisdiction over the subject matter pursuant to RCW
8 36.70A.280(1).

9 Pursuant to RCW 36.70A.320(1), comprehensive plans and development regulations,
10 and amendments to them, are presumed valid upon adoption. This presumption creates a
11 high threshold for challengers as the burden is on the petitioner to demonstrate that any
12 action taken by the City is not in compliance with the GMA.

13 The Board is charged with adjudicating GMA compliance and, when necessary,
14 invalidating noncompliant plans and development regulations.¹ The scope of the Board's
15 review is limited to determining whether a city or county has achieved compliance with the
16 GMA only with respect to those issues presented in a timely petition for review.² The Board
17 shall find compliance unless it determines that the City's action is clearly erroneous in view
18 of the entire record before the Board and in light of the goals and requirements of the GMA.
19 RCW 36.70A.320(3). In order to find the City's action clearly erroneous, the Board must be
20 "left with the firm and definite conviction that a mistake has been made." *Dep't of Ecology v.*
21 *PUD 1, 121 Wn.2d 179, 201 (1993)*. The burden of proof regarding SEPA actions and
22 decisions, is that the decision of the governmental agency shall be accorded substantial
23 weight.³
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31 ¹ RCW 36.70A.280, RCW 36.70A.302.

32 ² RCW 36.70A.290(1).

³ RCW 43.21C.090.

1 **III. PROCEDURAL MATTERS**

2 On May 26, 2016, Puget Western, Inc. (Petitioner) filed a petition for review. The
3 petition was assigned Case No. 16-3-0001.

4 A prehearing conference was held telephonically on June 14, 2016. Petitioner Puget
5 Western, Inc. appeared through its attorneys, G. Richard Hill and Ian Morrison. Respondent
6 City of North Bend appeared through its attorney Michael Kenyon.
7

8 On August 24, 2016, the Presiding Officer sent a letter to the parties taking official
9 notice of the Transportation Element and the Capital Facilities Element of North Bend's
10 Comprehensive Plan.⁴

11 On September 13, 2016, Petitioner filed a Motion Requesting Official Notice of the
12 Washington Department of Transportation truck parking survey and summary released
13 August 2016.⁵ The City responded and recommended the Board not take official notice.⁶
14 The motion for official notice was denied.⁷
15

16 The briefs and exhibits of the parties were timely filed and are referenced in this order
17 as follows:

- 18 • Puget Western's Opening Brief, July 22, 2016 (Petitioner's Brief);
19 • City's Response Brief, August 12, 2016 (Response Brief);
20 • Puget Western's Revised Opening Brief, August 24, 2016 (Petitioner's Revised
21 Brief);
22 • Puget Western's Reply Brief, August 29, 2016 (Reply Brief).
23

24 The hearing on the merits was convened September 29, 2016. The hearing afforded
25 each party the opportunity to emphasize the most important facts and arguments relevant to
26 its case. Board members asked questions seeking to thoroughly understand the history of
27 the proceedings, the important facts in the case, and the legal arguments of the parties.
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30 ⁴ Letter Re: Official Notice (August 24, 2016).

31 ⁵ Puget Western's Motion Requesting Official Notice (September 13, 2016).

32 ⁶ City's Response to Puget Western's Motion Requesting Official Notice (September 22, 2016).

⁷ Order on Motion for Official Notice (September 27, 2016).

IV. ANALYSIS AND DISCUSSION

Ordinance 1583 amended North Bend's Municipal Code with regard to commercial truck center/service areas in the East North Bend Master Plan Overlay District of the City. The amendment allows for continued operation and improvement of an existing commercial truck center/service area but additional or expanded commercial truck center/service areas in the district are prohibited.

Although there are five issues in this case, the first four are dependent on whether truck **parking facilities** are **essential public facilities**. Thus, the resolution of Issue No. 1 on that question will determine the fate of Issues Nos. 3 and 4. Issue No. 2 was not briefed by the Petitioner and was deemed abandoned.

Issue No. 5 is focused on a SEPA issue, the adequacy of the City's Determination of Nonsignificance (DNS) used to support its ordinance. The Board first analyzes the key issue of whether truck parking facilities are essential public facilities and then, whether the Respondent has violated SEPA.

Applicable Law for Issues 1 – 4

Under RCW 36.70A.200(5) "No local comprehensive plan or development regulation may preclude the siting of **essential public facilities**." Emphasis added.

The Growth Management Act in **RCW 36.70A.030** defines public facilities to include "streets, roads, highways, sidewalks, street and road lighting systems, traffic signals, domestic water systems, storm and sanitary sewer systems, parks and recreational facilities, and schools. **RCW 36.70A.200(1)** further explains that essential public facilities "include those facilities that are typically difficult to site, such as airports, state education facilities and state or regional transportation facilities as defined in RCW 47.06.140,⁸

⁸ RCW 47.06.140 identifies transportation facilities that are of "statewide significance" as designated by the legislature under chapter 47.05 RCW, the interstate highway system, interregional state principal arterials including ferry connections that serve statewide travel, intercity passenger rail services, intercity high-speed ground transportation, major passenger intermodal terminals excluding all airport facilities and services, the freight railroad system, the Columbia/Snake navigable river system, marine port facilities and services that are

1 regional transit authority facilities as defined in RCW 81.112.020, state and local
2 correctional facilities, solid waste handling facilities, and inpatient facilities including
3 substance abuse facilities, mental health facilities, group homes, and secure community
4 transition facilities.”

5 WAC 365-196-550(4)(b)(i), concerning comprehensive plan treatment of essential
6 public facilities, provides guidance in identifying essential public facilities:
7

8 “When identifying essential public facilities, counties and cities should take a
9 broad view of what constitutes a public facility, involving the full range of
10 services to the public provided by the government, substantially funded by the
11 government, contracted for by the government, or provided by private entities
subject to public service obligations.”

12 Thus, an essential public facility is one that (1) is designated as such by the
13 legislature in RCW 36.70A.200; (2) designated as such by a county or city consistent with its
14 comprehensive plan; (3) provides, or is necessary to provide, a public service **and** is difficult
15 to site.⁹
16

17 **ISSUE 1:** Does the Ordinance 1583 violate RCW 36.70A.200(5), because it precludes the
18 siting of **essential truck parking facilities**?
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20 **Position of the Parties**

21 Petitioner asserts that commercial truck parking facilities should be considered
22 essential public facilities under the GMA because RCW 36.70A.200 requires taking a broad
23 view of what constitutes essential public facilities and WAC 365-196-550 describes these
24 facilities as difficult to site, noting it includes state or regional transportation facilities that are
25 typically **difficult to site**.¹⁰
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29 related solely to marine activities affecting international and interstate trade, key freight transportation corridors
30 serving these marine port facilities, and high capacity transportation systems serving regions as defined in
RCW 81.104.015.

31 ⁹ WAC 365-196-550(1)(f).

32 ¹⁰ WAC 365-196-550(1)(a) and WAC 365-196-550(1)(d)(iii).

1 In support of recognizing truck parking facilities as essential public facilities, the
2 Petitioner asserts that such facilities can be commercial facilities, citing *Hapsmith*¹¹, in which
3 the Board held that a private railroad facility located within the City of Auburn, including its
4 associated yards, trackage and intermodal centers were an essential public facility because
5 the site served the state or region. Additionally, Petitioner encourages the Board to take a
6 broad view, citing *Cascade Bicycle Club v. City of Lake Forest Park*,¹² in which the Board
7 held that the statutory list is non-exclusive and includes a nonmotorized regional trail.¹³ The
8 Petitioner also cites state truck parking studies that indicate parking facilities are an
9 important part of the I-90 freight mobility corridor, that there is a significant shortage of
10 available truck parking areas in the state, particularly along key highway routes such as I-90
11 near North Bend, and that new Federal regulations require longer driver rest times which
12 increase the need for additional parking and make the shortage worse.¹⁴

14 Respondent City of North Bend argues that a commercial, for profit, truck stop fails to
15 satisfy the criteria for an essential public facility, and cannot be reasonably compared to the
16 regional transportation essential public facilities identified by the legislature, such as
17 highways, railways, ferry routes, and navigable rivers.¹⁵ The City contends that truck stops
18 are for-profit operations that serve the private trucking industry, as well as any other motorist
19 who stops for gas or lunch.¹⁶ The City also argues that truck stops are not difficult to site,
20 noting that there are several truck stops in Washington State.

22 The City cites WAC 365-196-550(4)(b)(i) as an important qualifier concerning the
23 broad view of essential public facilities encouraged by statute and regulation, especially in
24 light of the examples of private facilities found to be essential public facilities in *Hapsmith*
25 and *Cascade Bicycle*. The regulation advises that essential public facilities include those

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29 ¹¹ CPSGMHB No. 95-3-0075c (FDO, May 10, 1996) p.39.

30 ¹² *Cascade Bicycle Club v. City of Lake Forest Park*, GMHB No. 07-3-0010c.

31 ¹³ Puget Western's Revised Opening Brief at 15.

32 ¹⁴ Id. at 4-5.

¹⁵ City's Response Brief (August 12, 2016) at 2.

¹⁶ Id.

1 which provide “the full range of services to the public provided by the government,
2 substantially funded by the government, contracted for by the government, or provided by
3 private entities subject to public service obligations.”
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5 **Board Analysis**

6 The Petitioner’s preliminary concept of what it had planned to build is a commercial
7 truck parking facility which includes retail service space and a truck maintenance facility.”¹⁷
8 The City refers to this type of facility as a private, for- profit, truck stop.¹⁸ Regardless of
9 label, the key question is whether truck “parking” facilities are essential public facilities within
10 the meaning of statute and regulation.
11

12 **Is truck parking an essential public facility?**

13 As noted above, the statute defines an *essential public facility* as one that (1) is
14 legislatively-designated as such by the legislature in RCW 36.70A.200; (2) designated as
15 such by a county or city consistent with its comprehensive plan; or (3) provides, or is
16 necessary to provide, a public service **and** is difficult to site.¹⁹
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18 The parties do not dispute that neither RCW 47.06.140 or RCW 36.70A.200 call out
19 truck parking as an essential public facility, nor has King County or the City of North Bend
20 identified truck parking as such. Neither has the Washington State Department of
21 Transportation (WSDOT) classified truck parking in North Bend, or elsewhere, as an
22 essential public facility.
23

24 Lacking any specific reference to truck parking in RCW 47.06.140, we look to WAC
25 365-196-550 directly addressing essential public facilities for guidance. The regulation
26 acknowledges that essential public facilities may be privately owned,²⁰ consistent with the
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28 ¹⁷ Puget Western’s Revised Opening Brief at 3.

29 ¹⁸ City’s Response Brief at 2 and 3.

30 ¹⁹ WAC 365-196-550(1)(f).

31 ²⁰ See, e.g., WAC 365-196-550(3)(e), which reads:

32 (e) Essential public facilities that are sited through a regional or state agency are distinct from those that are “sited by” a city or county **or a private organization or individual**. When a city

1 *Hapsmith* and *Cascade Bicycle* decisions cited by the Petitioner. Further, the regulation
2 calls on cities and counties to engage in a process for identifying essential public facilities in
3 comprehensive plans, calling for a “broad view of what constitutes a public facility, involving
4 the full range of services to the public provided by the government, substantially funded by
5 the government, contracted for by the government, or **provided by private entities subject**
6 **to public service obligations.**”²¹ (Emphasis added.)
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8 The regulation recognizes the potential for private ownership, as was the case in
9 *Hapsmith*, and for the need to take a broad view of facilities not specifically called out, as
10 was the case in *Cascade Bicycle*. But when an essential public facility is provided by a
11 private entity, the regulation anticipates an identifiable public service obligation. That
12 obligation is not present here.

13 The Petitioner shows that I-90 is part of a key transportation corridor, recognized by
14 the legislature and local authorities.²² The interstate itself is an essential public facility.
15 However, neither the state nor WSDOT classifies truck parking here, or elsewhere, as an
16 essential public facility. In this regard, the Regional Administrator of the NW Region of
17 WSDOT noted the current state position on truck parking in the I-90 corridor in an April 2016
18 letter to North Bend’s Community and Economic Development Director, inter alia:²³
19

20 Thank you for the opportunity to review and comment on the proposed
21 amendmentsregarding parking for commercial trucks.
22 The need for truck parking has been partially addressed by the private sector
23 at exit 34, however, there are times when demand exceeds capacity.
24 Although North Bend prohibits truck parking on city streets we appreciate the
25 City’s decision to provide a public safety exception in its code during pass
26 closures on I-90. WSDOT understands that truck parking facilities have
27 impacts on the community which can be difficult to fully mitigate even with
28 carefully crafted city ordinances.

29 or county is siting its own essential public facility, public **or private**, it is free to establish a
30 nonpreclusive siting process with reasonable criteria.

31 ²¹ WAC 365-196-550(4)(b)(i).

32 ²² Exhibit 16, p.000190.

²³ Exhibit 33, pp. 000906-000907.

1 **Later this year** WSDOT, in cooperation with partners, will develop a state-
2 wide plan for truck parking.....The plan will assess the feasibility of
3 increasing the supply of commercial truck parking on both public and privately
4 owned properties.

5 The Interim Freight Director for WSDOT explained that the agency has just started a
6 statewide strategic truck-parking plan and hopes to complete it within a year.²⁴ In this
7 regard, the city code includes a discussion of the need for such a study involving
8 commercial truck centers, inter alia: "This facility is currently the only commercial truck
9 center in King County. The City has determined expansion of this use, beyond the current
10 site, is not in the best interest of North Bend, unless a regional freight mobility plan is
11 developed, which addresses the overall needs and adverse impacts of this industry"²⁵

12 The comments by these state officials and the truck parking studies cited by the
13 Petitioner show a demand for places to park and the growing concern the state has about a
14 shortage of such parking along major truck corridors. This may foreshadow a future
15 determination by WSDOT or the Washington State Legislature, statutorily, by regulation or
16 otherwise, that some amount of truck parking may be essential in some locations. Until that
17 time, however, the Board declines to stand in the place of the legislature or agency and find
18 that some quantity of truck parking facilities in North Bend is essential to the functioning of
19 the interstate system.
20

21 Petitioner also argues that truck parking facilities are essential public facilities
22 because they are difficult to site. Petitioner relies on subsection (3) which states that such a
23 facility provides or is necessary to provide a public service **and** is difficult to site. WAC 365-
24 196-550 in its entirety presents the difficulty of siting as a secondary criterion, along with
25 providing, or being necessary to provide, an essential public service. If truck parking
26 facilities are not essential to the function of the interstate system, then the fact that they may
27 well be difficult to site does not make them essential public facilities.
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31 ²⁴ Id. p.000860.

32 ²⁵ Exhibit 1, p.01.

1 **Conclusion:**

2 The Board finds and concludes that truck parking facilities in the East North Bend
3 Overlay district are not essential public facilities. Petitioner has not satisfied its burden of
4 proof in showing that Ordinance No. 1583 violates RCW 36.70A.200(5) because it has not
5 proven that it prohibits the siting of essential truck parking facilities.
6

7 **ISSUE 2 :** *Does the Ordinance violate the Act, specifically RCW 36.70A.200(1) because it is*
8 *inconsistent with and does not implement the Countywide Planning Policies and the City's*
9 *Comprehensive Plan related to identifying and siting essential public facilities?*

10 **Conclusion:**

11 The Petitioner withdrew Issue 2 in its Prehearing Brief and failed to brief the issue at
12 the Hearing on the Merits. This issue is deemed abandoned.
13

14 **ISSUE 3:** *Does the Ordinance violate the Act, specifically, RCW 36.70A.040, RCW*
15 *36.70A.070, RCW 36.70A.120 and RCW 36.70A.130, because it is inconsistent with the*
16 *Transportation and Capital Facilities Elements of the City's Comprehensive Plan and with*
17 *Section 18.24.080 of the North Bend Municipal Code by precluding the siting of this modern*
18 **commercial truck parking facility, an essential public facility?**

19 **Conclusion:**

20 This issue depended upon the Petitioner meeting its burden of proof on the issue of
21 whether a commercial truck parking facility is an essential public facility in Issue 1. Having
22 not met that burden of proof, this issue is dismissed.
23

24 **ISSUE 4:** *Does the Ordinance violate Goals (1), (3), (5), (6), (11) and (12) of RCW*
25 *36.70A.020 by precluding the siting of an **essential public facility** that serves the regional*
26 *multi-modal transportation, economic development and public service priorities by*
27 *preventing development of **commercial truck parking facilities** along the private property*
28 *adjacent to I-90?*

1 **Conclusion:**

2 This issue depended upon the Petitioner meeting its burden of proof on the issue of
3 whether a commercial truck parking facility is an essential public facility in Issue 1. Having
4 not met that burden of proof, this issue is dismissed.
5

6 **ISSUE 5 :** *Did the City fail to comply with SEPA by issuing a Determination of*
7 *Nonsignificance (DNS) that: (1) failed to identify and address the probable significant*
8 *adverse impacts requiring an environmental impact statement (including the impacts to*
9 *public health, transportation, vehicular traffic, the movement of people and goods and*
10 *consistency with the applicable existing land use plans and policies) in violation of RCW*
11 *43.21C.020(2)(c), RCW 43.21C.031 and SEPA's implementing regulations; (2) failed to*
12 *identify and address the probable significant adverse extra-jurisdictional impacts that may*
13 *occur outside the City's borders in violation of WAC 197-11-060(4); and (3) failed to obtain,*
14 *include and/or evaluate pertinent information and studies, including the City's long-*
15 *promised, but never produced infrastructure study and a number of federal, state and*
16 *regional freight mobility and commercial truck parking safety studies, in violation of WAC*
17 *197-11-080(1)-(2)?*

16 **Applicable Law**

17 **RCW 43.21C.020 - Legislative recognitions—Declaration—Responsibility.**

18 (2) In order to carry out the policy set forth in this chapter, it is the continuing
19 responsibility of the state of Washington and all agencies of the state to use all
20 practicable means, consistent with other essential considerations of state policy, to
21 improve and coordinate plans, functions, programs, and resources to the end that the
22 state and its citizens may:

23 (c) Attain the widest range of beneficial uses of the environment without degradation,
24 risk to health or safety, or other undesirable and unintended consequences;

25 **RCW 43.21C.031 - Significant impacts.**

26 (1) An environmental impact statement (the detailed statement required by RCW
27 43.21C.030(2)(c)) shall be prepared on proposals for legislation and other major
28 actions having a probable significant, adverse environmental impact..

29 (2) An environmental impact statement is required to analyze only those probable
30 adverse environmental impacts which are significant. Beneficial environmental
31 impacts may be discussed.
32

RCW 43.21C.090 – Decision of governmental agency to be accorded substantial weight.

In any action involving an attack on a determination by a governmental agency relative to the requirement or the absence of the requirement, or the adequacy of a "detailed statement", the decision of the governmental agency shall be accorded substantial weight.

WAC 197-11-060 – Content of environmental review

(4) Impacts.

(a) SEPA's procedural provisions require the consideration of "environmental" impacts see definition of "environment" in WAC 197-11-740 and of "impacts" in WAC 197-11-752), with attention to impacts that are likely, not merely speculative. (b) In assessing the significance of an impact, a lead agency shall not limit its consideration of a proposal's impacts only to those aspects within its jurisdiction, including local or state boundaries (see WAC 197-11-330(3) also).

(c) Agencies shall carefully consider the range of probable impacts, including short-term and long-term effects. Impacts shall include those that are likely to arise or exist over the lifetime of a proposal or, depending on the particular proposal, longer.

(d) A proposal's effects include direct and indirect impacts caused by a proposal. Impacts include those effects resulting from growth caused by a proposal, as well as the likelihood that the present proposal will serve as a precedent for future actions.

WAC 197-11-080 – Incomplete of unavailable information

(1) If information on significant adverse impacts essential to a reasoned choice among alternatives is not known, and the costs of obtaining it are not exorbitant, agencies shall obtain and include the information in their environmental documents.

(2) When there are gaps in relevant information or scientific uncertainty concerning significant impacts, agencies shall make clear that such information is lacking or that substantial uncertainty exists.

WAC 197-11-784 – Proposal

"Proposal means a proposed action. A proposal includes both actions and regulatory decisions of agencies as well as any actions proposed by applicants. A proposal exists at that stage in the development of an action when an agency is presented with an application, or has a goal and is actively preparing to make a decision on one or more alternative means of accomplishing that goal, and the environmental effects can be meaningfully evaluated. (See WAC 197-22-955 and 197-11-060(3).) A proposal may therefore be a particular or preferred course of action or several alternatives. For this reason these rules use the phrase "alternatives including the

1 proposed action.” The term “proposal” may therefore include “other reasonable
2 courses of action,” if there is no preferred alternative and if it is appropriate to do so
3 in the particular context.

4 **Position of the Parties**

5 Petitioner asserts that in developing its DNS for the Ordinance, the City did not
6 include or discuss “hundreds of pages of federal, state and local reports, studies and other
7 materials that related to transportation impacts of commercial truck parking facilities -
8 including the impacts on the movement/circulation of people and goods and parking” in the
9 City’s Environmental Checklist or DNS.²⁶ Petitioner also asserts that the City issued the
10 DNS without producing its own study on the impacts of commercial truck parking facilities on
11 the City’s streets and surrounding communities and that the City should also have
12 considered the impacts of its action on adjacent jurisdictions.²⁷

14 In arguing impermissible parochialism, the Petitioner cited a state Supreme Court
15 case holding that the City must consider the environmental impacts that may arise in
16 adjacent jurisdictions,²⁸ arguing that the City failed to evaluate the extra-jurisdictional
17 impacts that banning commercial truck parking facilities would have on transportation,
18 including the movement of goods and people and parking.²⁹ In addition, Petitioner
19 disagrees with the City’s argument that its DNS found no probable impacts with the adoption
20 of Ordinance 1583 and cites another Supreme Court case for the proposition that when
21 government decisions may have a snowballing effect, decision makers need to be apprised
22 of the environmental consequences before the project picks up momentum, not after.³⁰
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24 The City requests that the Board dismiss Issue 5 with regard to RCW
25 43.21C.020(2)(c) because this provision was not briefed by the Petitioner.³¹ Regarding the
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28 ²⁶ Puget Western’s Revised Opening Brief at.24-25,

29 ²⁷ Id. at. 25-26.

30 ²⁸ *Save a Valuable Environment v. City of Bothell*, 89 Wn.2d 862, 869 576 P.2d 201 (1978).

31 ²⁹ Puget Western’s Revised Opening Brief at 26.

³⁰ *King County v. Washington State Bound Review Bd.*, 122 Wn.2d, 648, 663-64, 860 P.2d 1024 (1993)
 (“Black Diamond).

³¹ City’s Response Brief, at 29.

1 DNS, the City asserts that the proposed action is the adoption of an ordinance banning new
2 truck stops in the East North Bend Master Plan Overlay District.³² The Ordinance is not an
3 ordinance permitting truck stops, or an actual development proposal for the site, citing the
4 definition of “proposal” at WAC 197-44-784.³³

5 The City determined that no probable adverse environmental impacts would, or
6 could, arise from the adoption of the proposed City Ordinance and, as such, could not have
7 extra-jurisdictional impacts³⁴ Regarding the inclusion of the many documents submitted by
8 the Petitioner, the City argues that Petitioner failed to cite any authority for the proposition
9 that the City has an obligation to detail every document and fact considered in issuing its
10 DNS.³⁵ The City has had a truck stop within its boundaries for many years and is well
11 aware of the impacts caused by a truck stop and asserts that Ordinance 1583 did not create
12 or add to the current state of truck parking but simply maintains the status quo. ³⁶
13
14

15 **Board Analysis**

16 In its Issue Statement and in its assertions about an inadequate DNS for this
17 Ordinance, Petitioner seems to focus on impacts of the shortages of commercial truck
18 parking in the region and places responsibility for future shortages on the action of the City
19 of North Bend. Petitioner urges that, in evaluating the environmental impacts of the
20 Ordinance, the City should have considered the regional environmental impacts of not
21 providing additional truck parking, not just the impacts of truck parking in the City’s East
22 North Bend Master Plan Overlay District.
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25 The Board acknowledges that SEPA may require the City to evaluate impacts outside
26 its jurisdiction in appropriate cases, but does not find either of the cases cited as persuasive
27 for that duty here. Rather, the scope and sufficiency of the DNS is evaluated according to
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29 ³² Id, at 29, 21.

30 ³³ City’s Response Brief, at 29.

31 ³⁴ Id, at 30.

32 ³⁵ Id, at 31.

³⁶ Id. at 31-32.

1 our understanding of what is the “proposal” at issue in WAC 197-11-784. Here, the
2 proposal is adoption of an ordinance banning new trucks stops in a specific part of the city.
3 The sufficiency of the DNS is evaluated in light of the “proposal.” The proposal is NOT a
4 development proposal or an ordinance permitting truck stops.

5 Concerning the adequacy of the environmental information included in the DNS, the
6 Board agrees that Ordinance 1583 did not create or worsen the current need for truck
7 parking, it simply maintains the status quo. The Ordinance did not add additional truck
8 stops, nor did it eliminate any. Neither does the Ordinance itself increase truck traffic and
9 thereby increase demand for parking. The City’s DNS was appropriately focused on the
10 likely impacts of this non-project threshold determination.

11 The Board notes, in this same vein, that an environmental impact statement is
12 required to analyze **probable** adverse environmental impacts which are significant.³⁷ As
13 noted in WAC 197-11-782: “Probable” means likely or reasonably likely to occur, as in “a
14 reasonable probability of more than a moderate effect on the quality of the environment.”
15 Probable is used to distinguish likely impacts from those that merely have a possibility of
16 occurring, but are remote or speculative. Further, SEPA does not require an EIS to discuss
17 mitigation of impacts beyond those that are attributable to the project under consideration.³⁸

18 In sum, **the Board concludes** that the City has no obligation to consider the
19 “speculative” impacts of not providing for more *regional* truck parking in evaluating an
20 ordinance that limits the expansion of truck parking in a portion of the *city*.

21 **Conclusion:**

22 The Board finds and concludes that Petitioner has not carried its burden of proof to
23 show that the City failed to comply with RCW 43.21C.020, RCW 43.21C.031, WAC 197-11-
24 060, or WAC 197-11-080.

31 ³⁷ RCW 43.21C.031(1).

32 ³⁸ *Thornton Creek Legal Defense Fund v. City of Seattle*, 113 Wn. App. 34, 58-59, 52 P.3d 522 (2002).

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V. ORDER

Based upon review of the Petition for Review, the briefs and exhibits submitted by the parties, the GMA, SEPA, prior Board orders and case law, having considered the arguments of the parties, and having deliberated on the matter, the Board finds that the Petitioner has not carried its burden of proof on any of its Issues concerning North Bend Ordinance No. 1583. The allegations of noncompliance with the Growth Management Act and State Environmental Policy Act are **dismissed**.

SO ORDERED this 21st day of November, 2016.

Charles Mosher, Board Member

Cheryl Pflug, Board Member

Deb Eddy, Board Member

Note: This is a final decision and order of the Growth Management Hearings Board issued pursuant to RCW 36.70A.300.³⁹

³⁹ Should you choose to do so, a motion for reconsideration must be filed with the Board and served on all parties within ten days of mailing of the final order. WAC 242-03-830(1), WAC 242-03-840. A party aggrieved by a final decision of the Board may appeal the decision to Superior Court within thirty days as provided in RCW 34.05.514 or 36.01.050. The petition for review of a final decision of the board shall be served on the board but it is not necessary to name the board as a party. See RCW 36.70A.300(5) and WAC 242-03-970. It is incumbent upon the parties to review all applicable statutes and rules. The staff of the Growth Management Hearings Board is not authorized to provide legal advice.